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IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M-10241-2019
Date of Decision: 08.05.2019

Balraj Jagdish Chopra .....**Petitioner**

Versus

State of Punjab .....**Respondent**

Coram: HON'BLE MR. JUSTICE JASWANT SINGH
HON'BLE MR. JUSTICE ARUN KUMAR TYAGI

Present: Mr.Bipan Ghai, Senior Advocate assisted by
Mr.Dilpreet Singh Gandhi, Advocate for the petitioner.

Mr.H.S.Grewal, Addl. Advocate General, Punjab.

Mr.Vijay Kumar Jindal, Senior Advocate assisted by
Mr.R.Kartikeya, Advocate for the complainant.

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ARUN KUMAR TYAGI, J.

The petitioner has filed present petition under Section 439 of the Code of Criminal Procedure (for short 'the Cr.P.C.) for grant of regular bail in case FIR No.94 dated 09.07.2015 registered under Sections 120-B, 406, 420, 465, 467, 468, 471 of the Indian Penal Code, 1860 (for short 'the IPC') in Police Station, Khamanon, District Fatehgarh Sahib.

Complainant No.2 Balbir Singh Uppal, Chairman/Managing Director of complainant No.1 M/s Laxmi Energy Foods Ltd., Chandigarh-Ludhiana National Highway, Khamanon submitted written complaint alleging that accused No.2 Balraj Jagdish Chopra, Chairman/Managing Director of accused No.1 Company-Arin Developers Pvt. Ltd., Mumbai and his co-accused Taranath Mahalinga Shetty and Pinki Chopra, Directors of the abovesaid company were introduced to the complainants by one Sh.Kamal Kant Dewan, who was dealing in real estate and projected that he was associated with the accused persons for a long time and had confirmed about their competence and capability to develop the housing project. The accused persons visited the office of the complainants with Sh.Kamal Dewan and fraudulently represented that the investment made by the complainants in M/s Arin Developers Pvt. Ltd. would double/triple during the next 18 months and that the company had already acquired land for its project and completed all requisite formalities with the Local Authorities and construction activities of the project had already commenced. On dishonest inducement by the accused, the complainant invested amounts mentioned in the complaint totaling about Rs.11 crores through RTGS in the above-said company. The accused also induced the complainant to transfer amount of Rs.75,000/- for appointing him as Director in the company. The accused also approached Mr. Kamal Dewan for investment who expressed his inability. On inquiries the complainant No.2 came to know that the accused by forging signatures of the complainant No.2 had shown him as Additional Director in accused No.1 company. The accused persons have floated more than 20 companies for the purpose of committing fraud. As the complaint revealed commission of offences punishable under

Sections 120-B, 405, 406, 420, 467, 468 and 471 of the IPC, FIR No.94 dated 09.07.2015 was registered in Police Station Khamanon, District Fatehgarh Sahib. The Police investigated the case. Accused Taranath Mahalinga Shetty was arrested on 03.10.3015 who was granted bail by Additional Sessions Judge, Fatehgarh Sahib vide order dated 16.11.2015. The petitioner and his wife co-accused Pinky Chopra absconded. The petitioner was declared proclaimed offender on 01.12.2015 and was arrested on 29.12.2018. On completion of investigation, the police has filed challan against accused Taranath Mahalinga Shetty and Balraj Jagdish Chopra.

Learned Counsel for the petitioner has argued that the complainant No.2 had given to the petitioner and his partner-Taranath Mahalinga Shetty an amount of Rs.1 crore each as royalty for induction as Directors in Arin Developers Pvt. Ltd. which was under oral mutual agreement treated as unsecured loan. The complainants invested the amounts in question in Arin Developers Private Ltd. which is doing business of developers at Mumbai since long and is a flourishing company. On request of the complainant, the complainant and his son in law-Kamal Kant Diwan were appointed as Directors by the petitioner and his co-accused in the above-said Company. Share transfer cheques of the complainant and his son in law-Kamal Kant Diwan were received in October, 2012 and share certificates were issued to the complainant and his son in law-Kamal Kant Diwan. The complainant No.2 was arrayed as accused in various criminal cases including Rs.5600 crores NSEL Scam and the complainant No.2 and companies controlled by him were alleged to have misappropriated funds of Rs.720 crores. The complainant No.2 resiled from his commitment on realizing the prospect of attachment of his investment by the Economic Offences Wing. When the petitioner explained that the amount invested in the project could not be returned, the complainant by misusing his influence and abuse of process got false FIR lodged against the petitioner and his co-accused. It was only the business transaction which took place between the complainants and the petitioner and no case under the IPC is made out. The complainant forged the allotment letters of 4 residential flats regarding which FIR No.424 dated 13.04.2015 was registered in Police Station, Goregaon West District Mumbai against the complainant. Investigation has already been completed and challan has been filed. The petitioner is in custody for more than four and half months. The trial is likely to take long time. The offences alleged to have been committed by the petitioner are triable by the Judicial Magistrate, First Class having power of passing maximum sentence of three years. The petitioner was declared proclaimed offender but he did not evade the process of law and was merely availing remedies available to him under the law. The petitioner is suffering from serious ailments requiring continuous medical treatment and supervision. His co-accused Taranath Mahalinga Shetty was granted bail by the learned Additional Sessions Judge, Fatehgarh Sahib vide order dated 16.11.2015 (**Annexure P-6**). Therefore, the petitioner may be granted regular bail.

On the other hand, learned Counsel for the complainants has argued that the petitioner and his co-accused fraudulently represented to the complainants that Arin Developers Pvt. Ltd. had already acquired land for its project and completed all requisite formalities with the Local Authorities and construction activities of the project had already commenced and the investment made by the complainants in the above-said company would double/triple during the next 18 months. On dishonest inducement by the accused, the complainants invested amounts mentioned in the complaint totaling Rs.11 crores through RTGS in the above-said company. The accused fraudulently induced the complainant and his son in law-Kamal Kant Diwan as Directors in Arin Developers Pvt. Ltd. Ltd. without their consent, knowledge and authority. The accused cheated the complainant and misappropriated the amounts invested. The petitioner made mockery of law and the petitioner absconded till his arrest on 29.12.2018. His wife is still absconding and could not be arrested. When the petitioner was remanded to judicial custody, the petitioner, in collusion with the Jail Authorities and for extraneous consideration, managed to get himself admitted in private hospital. The petitioner having misused the court process does not deserve the concession of bail. Therefore, the bail application may be dismissed.

The petitioner and his co-accused are alleged to have fraudulently represented to the complainants that Arin Developers Pvt. Ltd. had already acquired land for its project and completed all requisite formalities with the Local Authorities and construction activities of the project had already commenced and the investment made by the complainants in the above-said company would double/triple during the next 18 months. On dishonest inducement by the accused, the complainants invested amounts mentioned in the complaint totaling Rs.11 crores through RTGS in the above-said company. The accused are also alleged to have fraudulently induced the complainant and his son in law-Kamal Kant Diwan as Directors in Arin Developers Pvt. Ltd. Ltd. without their consent. In his written statement given in pursuance to FIR

(**Annexure R-2/1**), the petitioner accepted that he and his co-accused Taranath Mahalinga Shetty received payment of Rs.1 crore each from complainant No.2 Balbir Singh Uppal via RTGS as royalty for appointment of complainant Balbir Singh Uppal and his son in law Kamal Kant Dewan as Directors in Arin Developers Private Ltd. However, contrary thereto the petitioner averred that the abovesaid amount was to be treated as unsecured loan for a tenure of 10 years as per mutual agreement between him and complainant Balbir Singh Uppal and the abovesaid amount was accordingly shown in his income tax return as unsecured loan. Besides, the petitioner and his partner Taranath Mahalinga Shetty issued receipts and allotment letters dated 14.05.2013 acknowledging receipt of amount of Rs.2 crores as full and final payment for 4 flats which is wholly inconsistent with their stand. The investment made by the complainant is not disputed. The petitioner has claimed that the complainant No.2 and his son in law-Kamal Kant Diwan were induced as Additional Directors in Arin Developers Pvt. Ltd. on their request but the petitioner and his co-accused are alleged to have done so without mandatory written consent of the complainant No.2 and his son-in-law Kamal Kant Dewan as required under statute. The petitioners are alleged to have cheated the complainants, forged the documents and misappropriated the amounts and to have thereby committed offences punishable under Sections 120-B, 406, 420, 464, 467 and 471 of the IPC.

No doubt, the offences alleged to have been committed by the petitioner are triable by Judicial Magistrate First Class but merely on that count the maximum punishment for the same cannot be said to be 3 years as even in case of trial by Judicial Magistrate First Class, the petitioner may be sentenced, on reference by Judicial Magistrate First Class, to imprisonment upto 7 years by the Chief Judicial Magistrate. The alleged involvement of the complainant in cases of cheating and criminal misappropriation does not in any manner lessen the gravity of the offences alleged to have been committed by the petitioner and entitle him to any sympathy, leniency or favourable treatment. What needs to be emphasized in this context is that the factors reckoning for facilitating ease of business and sustaining business environment for faster development, suffer due to ever increasing frauds and inordinate delay in adjudication of criminal liability which in a way also paralyses the national economy. Therefore, the cases of fraud have to be sternly dealt with to curve the rampancy thereof and trial of such cases has to be expedited for early adjudication of criminal liability, so as to ensure denial of fruits of their crime to those guilty of economic offences and exoneration of those falsely implicated due to business rivalry.

The allegations made against the petitioner and his co-accused are serious and have to be adjudicated upon on the basis of evidence to be produced during the trial. In the present case, the trial is not likely to take long time but for the dilatory tactics on the part of the accused. In this regard the conduct of the present petitioner becomes relevant and needs to be noticed. The petitioner and his wife filed application for anticipatory bail and on dismissal of his application for anticipatory bail the petitioner absconded on which he was declared proclaimed offender vide order dated 01.12.2015. The petitioner continued to evade the process of law for a long period of about 3 years till he was arrested on 29.12.2018. During all this period the petitioner cannot be said to be merely pursuing the judicial remedies available to him. On the other hand, he failed to surrender and continued to evade process of law despite specific adjournment taken by learned Counsel appearing for his wife during hearing of her anticipatory bail application on 01.02.2016 to complete instructions with regard to surrender by him. Even after his remand to judicial custody, the petitioner, in collusion with concerned jail authorities and evidently for extraneous consideration, managed to get himself admitted in private hospital-Amar Hospital, Patiala in the name of his medical treatment. From CRM-16229-2019 filed by the complainant and reply to the same filed by Deputy Superintendent, Central Jail, Patiala, it appears that even on his discharge by the above-said hospital, on receipt of communication for his examination by Medical Board regarding his requirement of such medical treatment, the petitioner, instead of reporting to or intimating the jail authorities, went to S.L.G. Ortho and Spine Centre, Patiala. The petitioner claimed himself to be suffering from pain in chest and back bone. However, the petitioner has not produced any medical treatment record to show his medical treatment for any of these ailments prior to his arrest and remand to police/judicial custody in the case. The wife of the petitioner was also declared proclaimed offender and is still absconding. Due to the conduct of the petitioner, the trial has been hampered, so much so that even the matter of framing of charges could not be heard and decided by the trial Court.

No doubt, co-accused Taranath Mahalinga Shetty has been granted bail by the Additional Sessions Judge, Fatehgarh Sahib but his case stands on different footing as there was no such dilatory conduct on his part. In view of the nature of the allegations made, gravity of accusation, previous conduct of the petitioner and chances of the petitioner absconding and delaying the trial if released on bail and other attending facts and circumstances, we are of the view that the petitioner does not deserve the concession of bail. We are, therefore, not inclined to accept the petition.

Accordingly, the petition is dismissed.

(JASWANT SINGH) **JUDGE**	**(ARUN KUMAR TYAGI)** **JUDGE**

08.05.2019
Kavneet Singh

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No